

A guide to ‘pay transparency’

July 2019

Why there is a need for an independent
pay transparency agency to close
the gender pay gap



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Introduction

The gender pay gap continues to represent a breach in New Zealand's human rights obligation for equal pay. That's why the Human Rights Commission (Commission) is calling for an end pay secrecy through the establishment of an independent pay transparency agency to close the gender pay gap.¹ This guide provides an overview of 'pay transparency' and outlines why there is a need for an independent pay transparency agency.

¹ Saunoamaali'i Karanina Sumeo, "Submission of the Human Rights Commission on the Equal Pay Amendment Bill," November 28, 2018, https://www.hrc.co.nz/files/8215/4352/5200/Human_Rights_Commission_Submission_on_Equal_Pay_Amendment_Bill.pdf; Saunoamaali'i Karanina Sumeo, "It's Time to End the Secrecy over Unequal Pay," The Press, March 8, 2019, <https://www.stuff.co.nz/national/111095968/its-time-to-end-the-secrecy-over-unequal-pay>.

What is the Gender Pay Gap?

The gender pay gap is a high-level indicator of the difference between women and men's earnings. It compares the median hourly earnings of women and men in full and part-time work. There are different methods of measuring the gender pay gap. Statistics New Zealand calculates New Zealand's official gender pay gap as the difference between the median hourly earnings of women and men in full and part-time work.² On 15 August 2018, Stats NZ announced that the gender pay gap was 9.2 percent.³ The gender pay gap has reduced since 1998 when it was 16.3 percent but has stalled in the last decade. The pay gap is much wider for disabled women, Māori, Pacific, Asian and women from other ethnic minority groups. This is informed by the Commission's tracking of the pay differences between different groups over the last decade through its Tracking Equality at Work reports.⁴

² Here is a link to more detailed guidance about how to calculate the gender pay gap by Stats NZ, the Ministry for Women and the State Services Commission.

³ StatsNZ, "Gender Pay Gap Is Second-Smallest," 2018.

⁴ "Tracking Equality at Work 2018: Summary and Recommendations," 2018, https://www.hrc.co.nz/files/2115/3013/8951/Tracking_Equality_Report_FINAL.pdf.

What are the causes of the gender pay gap?

The causes of the gender pay gap are complex. A substantial proportion of the gender pay gap has been attributed to factors such as differences in the occupations and industries that men and women work in, differences in education, or the fact that women are more likely to work part-time. There are also what the Ministry for Women calls “unexplained” factors.⁵ These are harder to measure and include conscious and unconscious bias – impacting negatively on women’s recruitment and pay advancement – and differences in men’s and women’s choices and behaviours.

There are still deeply held societal attitudes and beliefs about the types of work that are appropriate for men and women, the relative importance of occupations where men or women dominate, and the allocation of unpaid work, like caring for children and housework. These attitudes affect not only the choices men and women make around paid and unpaid work, but also the behaviours of others toward

men and women who make choices that are not consistent with these traditional beliefs.

Differences in behaviours and choices can include men and women’s willingness to negotiate pay and conditions, and whether employers may treat women differently from men when they do negotiate. Recent research from Australia found that women are willing to negotiate for pay but men are more likely to get a pay increase when they negotiate.⁶

⁵ Gail Pacheco, Chao Li, and Bill Cochrane, “Empirical Evidence of the Gender Pay Gap in New Zealand” (Wellington, 2017), https://women.govt.nz/sites/public_files/Empirical_evidence_of_GPG_in_NZ_-_Mar2017_0.pdf.

⁶ “New Study Suggests Women Do Ask for Pay Rises but Don’t Get Them” (University of Warwick,

September 5, 2016), https://warwick.ac.uk/fac/soc/economics/news/2016/9/new_study_suggests_women_do_ask_for_pay_rises_but_dont_get_them/.

Why is there a human right to equal pay?

Pay equity or “equal pay for work of equal value” is a fundamental right under international human rights law.⁷ New Zealand has obligations under international human rights treaties and the International Labour Organisation (ILO) conventions relevant to the prevention of discrimination on the grounds of sex and the principle of pay equity.⁸

New Zealand has also ratified international human rights treaties that uphold the principle of pay equity including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties place obligations on the New Zealand government to eliminate workplace discrimination and uphold the rights of equality of pay, treatment and conditions of work.

New Zealand’s compliance with these conventions is reviewed every four or so years by expert UN committees. At New Zealand’s May 2018 review, the CEDAW Committee recommended New Zealand, “Adopt

and enforce the principle of equal pay for work of equal value in a revised employment relations legislation covering both public and private workplaces, including through analytical job classification and evaluation methods and regular pay surveys, and regularly review wages in sectors in which women are concentrated.”

New Zealand has had the Equal Pay Act in place since 1972 which recognises that pay equity is a fundamental human right and that pay equity is an important element of a commitment to gender equality.

⁷ Equal pay was first outlined in the Universal Declaration of Human Rights 23(2). It is also referred to in other major treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Articles 3 and 7a) and the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁸ Convention 100 established the principle of “equal pay for equal value” that was earlier expressed in the Treaty of Versailles. Article 2(1) of Convention 100 provides that each Member

State shall: ...by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value

How can pay transparency reduce the gender pay gap?

Women in New Zealand have the right to make a pay equity⁹ and equal pay¹⁰ claims under the Equal Pay Act 1972. In order to do this woman, need access to information and resources to know what men doing the same or a similar job as them are being paid, and what people in male dominated occupations are being paid by way of comparison. At the moment, New Zealand does not currently have a legal requirement on businesses to report on their gender pay gap. The Government should implement a pay transparency mechanism that requires companies with 100 or more employees to report annually on their gender pay gap, their bonus gap and the gender of people at each level of their organisation. This information should be publicly available. An independent agency needs to be set up to that oversees the pay transparency mechanism which can monitor compliance and to provide advice and support to women wishing to make an equal pay claim.

⁹ Pay Equity means equal pay for work of equal value. It requires a comparison between male and female dominated occupations such as a Nurse and an Electrician.

How have other countries implemented pay transparency?

Pay transparency has been acknowledged around the world as an important way of reducing the gender pay gap.

Australia

The Workplace Gender Equality Act 2012¹¹ requires non-public sector employers with 100 or more staff to submit a report to the Workplace Gender Equality Agency between 1 April and 31 May each year for the preceding 12-month period. The Workplace Gender Equality Agency (WGEA) is an Australian Government statutory agency created by the Act. WGEA issues compliance letters to confirm that an organisation is compliant with its reporting obligations. The consequences of noncompliance are that the WGEA may name a non-compliant employer in a report to the Minister or by electronic or other means. Non-compliant employers may not be eligible to tender for contracts under the Commonwealth and some state procurement frameworks

¹⁰ Equal Pay means the right to receive the same pay as a person of the opposite sex for doing the same or similar work.

¹¹ <https://www.legislation.gov.au/Details/C2016C00895>

and may not be eligible for some Commonwealth grants or other financial assistance.

The Agency lists non-compliant organisations publicly on its website each year.¹² It also uses the reporting data to develop educational Competitor Analysis Benchmark Reports based on six gender equality indicators. In the 5 years since Australian businesses have been required to provide this data to WGEA the gender pay gap has decreased by 4%. in Australia.¹³

United Kingdom

In April 2017, the United Kingdom introduced the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017.¹³ The Regulations require all employers with more than 250 employees to publish information relating to the gender pay gap in their organisation. This includes information on the difference between the average hourly rate of pay to male and female employees; the difference between the average bonus paid to male and female employees; the proportions of male and of female employees who receive bonuses; and the relative proportions of male and female employees in each quartile pay band of

the workforce. The *Equality and Human Rights Commission* is responsible for ensuring employers publish their gender pay gap reports.

It will initially informally approach employers who have not met the reporting deadline, but employers could ultimately face fines and convictions.

Germany

In January 2017, Germany passed the Act on the Transparency of Pay aimed at promoting gender equality in pay. The Act came into force in July 2017. It provides for the individual right to information about remuneration paid to peers for organisations with more than 200 employees. The right to information includes: Disclosure of the remuneration that employees of the other gender receive for comparable work on a monthly average; Breakdown of this information for up to two specified wage components (e.g. base salary, bonus payments); Information on the relevant criteria for the determination of their own remuneration as well as the remuneration for the same / comparable work. The Act also requires companies with more than 500

¹² <https://www.wgea.gov.au/sites/default/files/non-compliant-orgs-list.pdf>

¹³ Workplace Gender Equality Agency, "No Title," n.d.

¹³ <http://www.legislation.gov.uk/ukdsi/2017/9780111152010>

employees to conduct voluntary internal audits to review remuneration schemes and actual remuneration considering gender equality. Status reports are also required under the German Commercial Code to report on gender equality and equal pay.¹⁴

Ontario, Canada

In May 2018, the Canadian province of Ontario passed Bill 3, the Pay Transparency Act 2018, the first piece of pay transparency legislation in Canada.¹⁵ The Act comes into force in January 2019. It requires employers to report their pay practices to the Ministry of Labour, and authorises the appointment of compliance officers to investigate whether employers have complied with the Act. Key provisions include: - Employers are prevented from seeking compensation history about any applicant - Employers who advertise a publicly advertised job must include information about the expected compensation or the range - All employers with 100 or more employees must publish a pay transparency report that must include the composition of the workforce, differences in compensation with respect to gender and other prescribed characteristics and must be posted online and be published online by

¹⁴ <https://www.twobirds.com/en/news/articles/2018/germany/wage-transparency-act>
<https://www.bakermckenzie.com/en/insight/publications/2017/05/transparency-pay-act>

Minister. - Provides powers to compliance officers to investigate or inspect employers' compliance with the Act - Employers can be penalised for contravening the Act in accordance with the regulations

Iceland

In 2018, Iceland enacted a law that required both public and private organisations with more than 25 employees to be audited annually and prove that they provide equal pay to men and women. Iceland's gender pay gap was between 14%-22% in 2015. With this new law, their government hopes to close the gap by 2022.

European Commission

The European Commission provided useful guidance to EU member states about pay transparency in 2014. The core measures they suggested were:

- a. an employee's right to request information on gender pay levels for the same work or work of equal value;
- b. an employer's duty to report on average gender pay levels by category of employee or position;
- c. an employer's duty to conduct an audit on pay and pay

¹⁵ https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2018/2018-05/bill---text41-3-en-b003ra_e.pdf

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- differentials on grounds of gender; and
- d. measures to ensure that the issue of equal pay, including pay audits, is discussed at the appropriate collective bargaining level

Conclusion

An effective and accessible pay equity legal framework is an important vehicle in eliminating the gender pay gap for marginalised groups.

The New Zealand government has a duty under international and domestic human rights law to ensure equal pay for work of equal value. This is not a right that women, Maori and Pacific communities disabled people or other marginalised groups should be left to bargain for.

The Human Rights Commission has made several recommendations over the years in the area of pay transparency, back pay, access to justice and the unfair onus on women to raise a pay equity claim in relation to the Government's ongoing work to close the gender pay gap.

Ending pay secrecy and moving towards pay transparency is the next sensible step.

Pay transparency is an essential component of pay equity which can be improved by providing employees with a right to access pay

information, requiring companies to report on pay, and conducting pay audits on companies. These measures can provide women with the information they need to assess whether they have a viable pay equity claim to start with.

The current legislative framework places the onus on women to raise a pay equity and equal pay claim with their employer. It fails to recognise the power imbalance between employers and female employees. This is exacerbated for Māori, Pacific and disabled women, and women from other marginalised groups. Pay equity and equal pay claims are about potential breaches of human rights and women have the right to timely and effective justice.

It's time to end pay secrecy and for the Government to pave the way for pay transparency to close the gender pay gap through the establishment of an independent pay transparency agency.

Get involved

For individuals

Add your name in support to end pay secrecy by demanding an independent pay transparency agency to close the gender pay gap:

action.hrc.co.nz/end-pay-secrecy

Discuss with your employer about the gender pay gap in your workplace.

Write a letter to your local member of parliament.

For Business, Unions, NGOs

Join the Human Rights Commission's call for pay transparency by adding your name in support of our campaign. Either contact us at the Commission to discuss joining the campaign or simply sending a letter addressed to our Equal Employment Opportunities Commissioner, Saunoamaali'i Karanina Sumeo, outlining your support.

Conduct an assessment of your gender pay gap in your organisation.

Contact us

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